

FCC MAIL SERVICE

MAY 31 10 11 AM '00

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	MM Docket No. 98-216
FM Broadcast Stations.)	RM-9381
(Arnoldsburg, West Virginia))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 17, 2000

Released: May 26, 2000

By the Chief, Allocations Branch:

1. Before the Allocations Branch for consideration is the Notice of Proposed Rule Making, 14 FCC Rcd 458 (1999), issued in response to a petition filed on behalf of Mountaineer Communications ("petitioner") proposing the allotment of Channel 264A to Arnoldsburg, West Virginia, as the community's first local aural transmission service. Petitioner filed comments reaffirming its intention to apply for the channel, if allotted. Star Communications, Inc. ("Star"), filed opposing comments. Reply comments were filed by petitioner.

2. In its comments, Star, licensee of Stations WVRC((AM) and WVRC-FM, Spencer, West Virginia, states that Arnoldsburg is a "population cluster" which is not a community of such size and nature as to merit its own local radio station, and it cannot financially support a station. Star alleges that the 1990 population figure of 150 persons is taken from publications of the Rand McNally company and that the community is not listed in the U.S. Census. Moreover, there is no local community government, and that Arnoldsburg does not have the customary community civic organizations. The main street is U.S. Highway 33 which runs through the population cluster; there are no named streets in the cluster. The Yellow Pages of the telephone directory do not list a single business in Arnoldsburg except for Stump Funeral Homes. Star estimates that Arnoldsburg has a total of 16 businesses that are mostly along the highway. Star concludes that the "cluster of population" falls short of "community status" required under Section 307(b) of the Communications Act, both in terms of its small population, which is not increasing, and its lack of local government and organizational structure. Further, Star argues that if a cluster of 150 persons reflecting the absence of significant community attributes such as those possessed by Arnoldsburg suffices to comply with the allocation requirements of the statute, then any cluster will satisfy the statute.

3. Lastly, Star claims that in the same notice of multiple docket FM allotments, petitions were filed in the names of "Mountaineer Broadcasting" and "Mountain State Broadcasting" for allotments in Arnoldsburg and Gassaway, West Virginia, respectively, and that both petitions

were signed by the same counsel with no engineering signature given on the technical exhibit attached to the petitions. Star concludes that the petitioners, whomever they may be, must have been aware that their filings would be of concern to existing known broadcasters. Therefore, fairness and effective administrative practice in processing such petition requires that the petitioning parties identify themselves in light of the their expressions of interest in each of these allotments.

4. In its reply comments, petitioner asserts that Star's objection to the proposed allotment is based on that fact that the allotment of a FM channel at Arnoldsburg would be competitive with Stations WVRC(AM) and WVRC-FM owned by Star, and that the Commission is not charged with protecting existing stations from competition or economic harm, citing Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, 3 FCC Rcd 638 (1988), recon. denied, 4 FCC Rcd 2276 (1989). Moreover, petitioner argues that Star's allegation that Arnoldsburg fails to meet community status is belied by the facts Star provides in its comments. Petitioner states that Star acknowledges that Arnoldsburg has an elementary school and 16 businesses, with the school and many businesses identifying themselves with Arnoldsburg by name, such as the Arnoldsburg branch of the Calhoun Bank and Arnoldsburg Mini Storage. Stars also notes the existence of the "Arnoldsburg School Improvement Council," the annual "Molasses Festival," and the "Health Fair" held in the West Fork Community Center in Arnoldsburg. Petitioner claims that Star omitted certain facts used by the Commission to determine community status, i.e., Arnoldsburg has its own post office and separate zip code 25234, and appears on road maps. As such, petitioner concludes that the criteria the Commission uses to determine whether "a population grouping" is a community for allotment purposes with the requisite "sense of unity and involvement in community concerns as shown by evidence that the residents function as and conceive of themselves as a community around which their interests coalesce." Mighty-Mac Broadcasting Co., 101 FCC 2d 303, 306 (1986); review denied, FCC 86-127 (March 24, 1986). Petitioner argues that community status has been shown in this proceeding by objective indications of the existence of a common perception that a locality's populace constitutes a distinct "geographical population grouping." Petitioner further states that the residents of Arnoldsburg clearly identify themselves with the community, and that it has the necessary elements of separateness.

5. Petitioner also disputes Star's suggestion that there is something sinister in that fact that the same counsel represents both Mountaineer Communications and Mountain State Broadcasting for the petitions filed for allotments at Arnoldsburg and Gassaway, West Virginia, respectively. Contrarily, petitioner claims that counsel's involvement demonstrates the bona fides of the proposals that there is an entity eager to provide the radio station sought. Petitioner states that Commission policy requires no more, and Star's assertion that the Commission should require disclosure of petitioner's principal or principals at this stage is not only unsupported but clearly incorrect.

Discussion

6. As an initial matter, we find that Arnoldsburg is a "community" for allotment purposes. The Commission has defined "communities" as "geographically identifiable population groupings." Generally, if a community is incorporated or is listed in the U.S. Census, that is

sufficient to demonstrate its status. Arnoldsburg is not incorporated or listed in the U.S. Census. We note, however, Arnoldsburg is listed in the 1998 Rand McNally Commercial Atlas and is attributed with a population of 140 persons, a post office, and a zip code. Arnoldsburg also has an elementary school, 16 businesses (some of which incorporate the name "Arnoldsburg"), and is located on maps. Moreover, as discussed earlier, petitioner has sufficiently demonstrated that Arnoldsburg is a geographical population grouping "with a sense of unity and involvement in community concerns as shown by evidence that the residents function as and conceive of themselves as a community around which their interests coalesce." See Mighty-Mac Broadcasting Co., supra.

7. With respect to Star's economic arguments that Arnoldsburg "is not a community of such size and nature as to merit its own local radio station," and " . . . it cannot support one financially" raise issues which the Commission has already determined are not relevant in either a licensing or allotment context. See Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations, supra; Cheyenne, Wyoming, 8 FCC Rcd 4473 (1993). Consequently, there is no basis under the current Commission precedent for consideration of those issues.

8. Finally, Star's alleges that both petitions for allotments at Arnoldsburg and Gassaway, West Virginia, were filed on behalf of the petitioners by the same counsel, and that "fairness and effective administrative practice in processing such petitions" requires that the petitioning parties identify themselves in light of their expressions of interest in the proposed allotments. The petitions for both the Arnoldsburg and Gassaway proposals were filed on behalf of the respective proponents by counsel. Since both petitioners were represented by counsel, albeit the same counsel, they were not required to sign, verify or give their addresses. See Amendment of Section 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911, 3919 n.41 (1990).

Technical Summary

9. An engineering analysis has determined that Channel 264A can be allotted to Arnoldsburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) to avoid a short-spacing to the licensed site of Station WJYP(FM), Channel 265A, South Charleston, West Virginia.¹

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 10, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, as follows:

¹ The coordinates for Channel 264A at Arnoldsburg are 38-49-00 North Latitude and 81-06-00 West Longitude.

<u>Community</u>	<u>Channel No.</u>
Arnoldsburg, West Virginia	264A

11. A filing window for Channel 264A Arnoldsburg, West Virginia, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. Questions relating to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau